IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A.No. 434 of 2006
Date of decision:23.11.2006

M/S Munshi Ram Trilochan Dass, Kalanwali ...Appellant

Versus

Commissioner of Income-tax and another ...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present:Mr.Akshay Bhan, Advocate for the appellant.

****

JUDGMENT

This appeal has been preferred under Section 260-A of Income Tax Act, 1961 proposing the following substantial question of law arising out of the order dated 2.12.2005 of the Income Tax Appellate Tribunal, Chandigarh passed in ITA No.2/Chandi/2005 in respect of the assessment year 1992-93:-

> "Whether in the facts and circumstances of the present case the impugned orders are legally sustainable in the eyes of law?"

As a consequence of the assessment for the assessment year 1992-93, an order of penalty was passed against the petitioner for concealment of income reflected in the investment in wheat outside the books of account. The Assessing Officer also noticed unexplained deposits in the bank accounts, which also led to the addition in the income. In quantum proceedings, the above order was upheld upto the Tribunal. During penalty proceedings, adequate opportunity was given to the assessee but the assessee did not appear. Appeal of the assessee was, however, allowed by relying upon certain observations made in the judgment of this Court in **CIT Vs. Munish Iron Store (2003) 263 ITR 484.** On appeal to the Tribunal, the stand of the revenue was upheld and stand of the assessee was rejected. It was observed that observations of this Court in Muhish Iron Store's case were not rightly appreciated. In spite of due opportunity,

the assessee could not furnish any explanation for undisclosed income. Reliance was placed on judgment of the Hon'ble Supreme Court in **K.P.Madhusudhanan Vs. Commissioner of Income-Tax, (2001) 251 ITR 99 (SC)** wherein it was held that where an inference could be drawn that the assessee had deliberately concealed the income, the penalty would be justified. The Tribunal observed that in view of the definite finding about the concealment of income, penalty was justified.

The assessee has not sought any question on perversity of the finding on the issue of concealment. Finding on the issue of concealment is concurrent. Procedural requirement of giving opportunity to the assessee or recording satisfaction cannot be over stretched to avoid the imposition of penalty even when the same is clearly called for, where concealment of income is fully established.

In view of the above, we do not find that any substantial question of law arises for consideration of this Court.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 23,2006 **(Rajesh Bindal)**
Pka **Judge**